

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff/Counter-Defendant-
Appellee,

v

HOMER LEE JOHNSON,

Defendant/Counter-Defendant-
Appellant,

and

UNUM LIFE INS CO,

Defendant/Counter-Plaintiff,

and

FLOYD D. JOHNSON, individually and as the
personal representative of the ESTATE OF MARY
ETTA JOHNSON, JAMES JOHNSON,
JEREMIAH JOHNSON, JOSEPH JOHNSON,

Counter-Defendants-Appellants,

and

CRANDELL FUNERAL HOME INC,

Counter-Defendant.

UNPUBLISHED

November 18, 2010

No. 294142

Muskegon Circuit Court

LC No. 09-046457-CZ

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

In this suit seeking reimbursement for the costs of care for a prisoner under the State Correctional Facility Reimbursement Act (the Reimbursement Act), see MCL 800.401 *et seq.*, defendant/counter-defendant Homer Lee Johnson and counter-defendants Floyd D. Johnson, who appeared on his own behalf and as the personal representative of the Estate of Mary Etta Johnson, James Johnson, Jeremiah Johnson, and Joseph Johnson (collectively appellants) appeal

as of right the trial court's orders granting summary disposition in favor of plaintiff State Treasurer (the Treasurer). On appeal, appellants argue that the trial court erred when it granted summary disposition in favor of the Treasurer because, at the very least, there was a question of fact as to whether Homer Johnson had an interest in the proceeds of the survivor benefit and life insurance policy at issue. Because we conclude that the trial court properly granted summary disposition in favor of the Treasurer, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In December 1995, the Muskegon Circuit Court sentenced Homer Johnson to serve 3 to 30 years in prison.¹ After his incarceration, Homer Johnson's wife, Mary Etta Johnson executed a March 2001 beneficiary designation form that named Homer Johnson as the primary beneficiary of a \$77,000 basic life insurance policy that she had through her employer, the Valspar Corporation. Unum Insurance Company underwrote the policy. On January 21, 2009, Mary Johnson died. In her statutory will, Mary Johnson provided that her sons, Floyd Johnson, James Johnson, Jeremiah Johnson, and Joseph Johnson, should receive all her property and she named Floyd Johnson to be her personal representative.

On January 23, 2009, Homer Johnson executed a power of attorney that designated his son, Floyd Johnson, as his attorney-in-fact. Around the same time,² he signed a letter in which he acknowledged that he was the beneficiary under his wife's life insurance policy and stated that he wanted "all legal documents, checks and all other Survivor Benefits information sent" to Floyd Johnson, who he had appointed to be his attorney-in-fact. These documents were forwarded to Unum along with a letter signed by Floyd Johnson on February 2, 2009, in which Floyd noted that, with regard to his mother's insurance claim, Unum would be unable to contact his father by phone at the prison because "they won't allow it." He also wrote that "Any check sent to the prison will be signed and cashed by the Muskegon prison and he'll never see a [c]ent." Finally, he indicated that he was faxing his father's power of attorney designation. Homer Johnson also executed an assignment of insurance proceeds on January 24, 2009. That document, which Floyd Johnson witnessed, instructed Valspar to assign \$5,056.50 of Mary Johnson's insurance benefits to the Crandell Funeral Home.

On January 30, 2009, the Treasurer sued Homer Johnson and Unum on behalf of the Michigan Department of Corrections (the Department) to recover the costs of care for Homer Johnson under the Reimbursement Act. Specifically, the Treasurer sought the funds in Homer Johnson's prisoner account, the proceeds of the life insurance policy on Mary Johnson, and more than \$3,900 in expected survivor benefits. The Treasurer moved for an order directing Homer Johnson to show cause why the prisoner account, survivor benefits, and insurance policy should not be applied to reimburse the Department for its costs of care. The Treasurer also asked the

¹ See *People v Johnson*, unpublished opinion per curiam of the Court of Appeals issued March 21, 1997 (Docket No. 191520).

² The letter is from late January 2009, but the exact date is difficult to read.

trial court to appoint Unum to be Homer Johnson's receiver of those benefits for the sole purpose of freezing and holding the benefits until further order of the court.

On the same day, the trial court entered an ex parte order appointing Unum to be the receiver of the survivor benefits and life insurance proceeds in order to hold them until further order of the court. The order also provided that Homer Johnson must appear before the court on March 2, 2009, in order to show cause as to why an order should not be entered applying those assets to reimburse the Department. The hearing was later rescheduled for April 13, 2009.

On March 17, 2009, Unum filed a motion and counterclaim asking to interplead Crandell, Floyd Johnson, James Johnson, Jeremiah Johnson, and Joseph Johnson under MCR 3.603(B). Unum alleged that each of the parties that it sought to interplead may have an interest in the survivor benefits and insurance proceeds at issue and asked the court to permit it to deposit the survivor benefits and insurance proceeds with the court pending settlement of the respective rights of the parties. Finally, Unum asked the trial court to dismiss it from the suit.

On April 1, 2009, Unum served notice on the trial court and the parties that it had received a disclaimer from Homer Johnson. In the disclaimer, which was dated March 23, 2009, Homer Johnson purported to disclaim any interest that he may have to his wife's survivor benefits in the amount of \$3,930.18 and to her life insurance proceeds in the amount of \$77,000.

On April 7, 2009, Homer Johnson's trial counsel filed an answer and brief in which he argued that the Treasurer's complaint should be dismissed. He also filed an objection to the ex parte motion to show cause. In his brief and objection, Homer Johnson's trial counsel argued that, as a result of his March 23, 2009, disclaimer, Homer Johnson did not have the assets that were the subject of the Treasurer's complaint. Therefore, the complaint did not state a claim upon which relief could be granted.

The trial court held a hearing on the motion to show cause on April 13, 2009. At the hearing, the appellants' counsel argued that the Treasurer could not get at the survivor benefits and insurance proceeds because Homer Johnson had disclaimed his interest in those assets. Specifically, he argued that Homer Johnson could disclaim his interest at any point prior to receiving actual control of the funds.

Counsel for the Treasurer disagreed and noted that Unum had submitted documents into the record that showed that Homer Johnson had asserted his right to the funds at issue and, for that reason, could not subsequently disclaim his interest in the funds. After obtaining the parties' agreement regarding Unum's payment of Crandell and depositing the remaining funds, the trial court indicated that it was not prepared to rule on the motion at the hearing. Instead, it asked the parties if they wanted to submit the matter on briefs:

THE COURT: Well probably the cleanest way to do this would be for you to submit competing motions for summary disposition. We don't have any factual disputes do we Ms. Harris?

MS. HARRIS [counsel for the Treasurer]: I don't think so. I think it's all legal.

MR. LADAS [counsel for appellants]: As long as we know there is no claim form by him we agree.

After agreeing to this procedure, Homer Johnson's counsel asked to go back on the record so that Homer could make a record about the circumstances surrounding his execution of the assignment in favor of Crandell. The parties agreed to let him make the record and he was sworn in. He then testified that his son, Floyd Johnson, brought two forms to him at the prison and told him that one was to authorize the cremation of his wife and the other was so the funeral home could get its money. Homer stated that he was reluctant to sign the assignment because he could not read it because it was covered up by the other paper, but that the officer on duty ordered him to fill it out. He also testified that he was not aware of any insurance proceeds at that time. On cross-examination he admitted that he understood that the funds that were to be paid to the funeral home were to come from the insurance proceeds, but stated that he was under duress at the time.

On April 24, 2009, the trial court entered an order granting Unum's request to interplead. It also granted Unum's request to deposit the \$3,930.18 in survivor benefits and \$77,000 in life insurance proceeds—for a total of \$80,930.18—with the court. The trial court indicated in its order that the parties had agreed that Unum could pay \$5,056.50 to Crandell and agreed that Unum would have no liability to any of the parties for the funds paid to Crandell. Finally, the Court dismissed Unum with prejudice upon payment of the \$5,056.50 to Crandell and the deposit of the remaining \$75,873.68 with the clerk of the court.

On May 11, 2009, the Treasurer moved for summary disposition under MCR 2.116(C)(9) and (C)(10). In its motion, the Treasurer argued that Homer Johnson could not disclaim his interest in the benefits and insurance proceeds under MCL 700.2910(1)(a) and (c), because he had already accepted the proceeds and assigned a portion prior to his disclaimer. The Treasurer also argued that, because the Reimbursement Act requires a prisoner to reimburse the State and specifically provides exceptions that do not include a power to disclaim an interest, Homer Johnson could not effectively disclaim his interest in the proceeds at issue.

On May 11, 2009, appellants' counsel also filed a motion for summary disposition. In that motion, appellants' counsel argued that the Treasurer's claim should be dismissed under MCR 2.116(C)(8) because Homer Johnson effectively disclaimed any interest that he had in the survivor benefits and insurance proceeds. Specifically, he argued that Homer Johnson only had a mere possibility of receiving the disputed funds prior to his disclaimer and that he could only assert his right to the funds by filing a claim and having it approved by Unum. Because he did not file a claim and Unum never disbursed the funds to him, he could still disclaim his interest.

On August 7, 2009, the trial court entered an opinion and order granting the treasurer's motion for summary disposition and denying appellants' motion for summary disposition. The trial court determined that, when the Treasurer filed its complaint, Homer Johnson had a vested interest in the funds at issue. It also noted that Homer Johnson executed a document assigning some proceeds to Crandell and directing the remaining to be paid to him and signed a letter directing that checks and survivor benefits information be sent to his son. Further, the court noted that there was a letter from Unum that acknowledged these documents as a claim. For that reason, the trial court concluded that Homer Johnson's disclaimer was ineffective under MCL

700.2910(1)(a) and (c). The trial court also concluded that Homer Johnson had a statutory duty to reimburse the State and, for that reason, could not disclaim his interest in order to avoid complying with the Reimbursement Act as provided under MCL 700.2904(2).

On August 27, 2009, the trial court signed an order releasing 90% of the funds on deposit with the court to the state agency that handles reimbursements and the remaining balance to Homer Johnson. Appellants then moved for reconsideration, which motion the trial court denied on September 1, 2009.

This appeal followed.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

Appellants argue that the trial court erred when it granted summary disposition in favor of the Treasurer and denied their motion for summary disposition. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo the proper construction of statutes such as the Reimbursement Act and the statute governing the disclaimer of property interests. *Granger Land Dev Corp v Dept of Treasury*, 286 Mich App 601, 608; 780 NW2d 611 (2009).

B. ASSETS SUBJECT TO REIMBURSEMENT

Prisoners have a statutory obligation to reimburse the State for the costs associated with their incarceration. *State Treasurer v Schuster*, 456 Mich 408, 419; 572 NW2d 628 (1998). And the attorney general has the authority to file a complaint seeking reimbursement for those costs. MCL 800.404(1). The costs include "transportation, room, board, clothing, security, medical, and other normal living expenses for prisoners." MCL 800.401a(b). Moreover, the attorney general has the authority to seek reimbursement from any of the prisoner's assets, which include all "property, tangible or intangible, real or personal, belonging to or due a prisoner or former prisoner including income or payments to such prisoner from social security, worker's compensation, veteran's compensation, pension benefits, previously earned salary or wages, bonuses, annuities, retirement benefits, or from any other source whatsoever" MCL 800.401a(a).

In this case, the attorney general sued on behalf of the Treasurer and sought reimbursement of the costs of care associated with incarcerating Homer Johnson from the survivor benefits and life insurance proceeds payable to him as a result of his wife's death. On appeal, appellants argue that the benefits and proceeds were not Homer Johnson's assets within the meaning of MCL 800.401a(a) because the benefits and proceeds were never directly paid to him. Rather, they argue that the funds would only become assets if Unum received a formal claim from him, approved the claim, and then disbursed the funds to him. We do not agree that Homer Johnson had to fill out a formal claim to the funds or have the funds disbursed to him before those funds could be considered an asset subject to reimbursement.

The Reimbursement Act is worded to apply to any property—tangible or intangible—belonging to *or due* to a prisoner from any source whatsoever. MCL 800.401a(a). As our Supreme Court has explained, this broadly worded language was intended to “to shift the burden of incarceration expenses to prisoners and from the taxpayers whenever possible.” *Schuster*, 456 Mich at 418. The fact that an asset is intangible or illiquid does not pose a barrier to the State’s efforts to seek reimbursement; rather, the question is whether the asset *belongs* to the prisoner or *is due* to the prisoner. A beneficiary’s right to the proceeds of a life insurance policy become absolute upon the death of the insured—that is, the proceeds are *due* to the beneficiary even though the beneficiary has not yet completed the formal requirements that precede disbursement. See *Aetna Life Ins Co v Owens*, 318 Mich 129, 138-139; 27 NW2d 607 (1947) (noting that the beneficiary’s interest in the policy attached instantly upon the death of the insured); *Dogariu v Dogariu*, 306 Mich 392, 406; 11 NW2d 1 (1943) (holding that upon the insured’s death, the right to the insurance proceeds vested instantly in the beneficiary and could not be altered through a provision in the insured’s will). Thus, as her primary beneficiary, Homer Johnson obtained a vested right to the proceeds of his wife’s survivor benefit and life insurance policy upon her death. And, even in the absence of actual disbursement of the proceeds, that vested right constituted an asset from which the State could properly seek reimbursement under the Reimbursement Act.

C. THE POWER TO DISCLAIM PROPERTY INTERESTS

Even if he had an interest in the life insurance proceeds and survivor benefit, appellants nevertheless argue that Homer Johnson could and did effectively disclaim his interest to those funds. A person may disclaim a disclaimable interest in whole or in part. MCL 700.2902(1). However, “if a disclaimed interest arises under a governing instrument other than a will or trust created by will, the disclaimer must be delivered after the effective date of the governing instrument and before any event described in [MCL 700.2910]”. MCL 700.2904(2). A person does not have an unlimited right to disclaim property; rather, a person may not disclaim an interest in property after the occurrence of certain events:

The right to disclaim property is barred by any of the following events that occur after the event giving rise to the right to disclaim and before the disclaimer is perfected:

(a) An assignment, conveyance, encumbrance, pledge, or transfer of the property, or a contract for such a transaction.

* * *

(c) An acceptance of the disclaimable interest or a benefit under the disclaimable interest after actual knowledge that a property right has been conferred. [MCL 700.2910(1).]

In this case, Homer Johnson, as her primary beneficiary, obtained a vested interest in the proceeds of Mary Johnson’s survivor benefit and life insurance after she died. *Dogariu*, 306 Mich at 406. That is, by naming her husband as her beneficiary, when Mary died, she effectively conferred a vested right to the proceeds of her survivor benefit and life insurance to Homer

Johnson. Indeed, had Unum wrongfully refused to pay the benefits to him, Homer Johnson could have sued Unum and compelled it to disburse the funds. Accordingly, he had a property right to the funds at issue after his wife's death.

Shortly after Mary died, Homer Johnson executed a document appointing his son, Floyd Johnson, to be his attorney-in-fact. He also signed a letter in which he stated that "as [the] beneficiary of [my] wife Mary Etta Johnson" that he wanted "all legal documents, checks and other Survivor Benefits information sent to" his son Floyd. He also specifically noted that Floyd held his power of attorney and could "take care of all my legal affairs." Additionally, Floyd Johnson signed a letter that was ultimately sent to Unum in which he acknowledged that he was his father's attorney-in-fact and indirectly stated that Unum should not contact Homer Johnson at the prison or send any check there. He also specifically noted that his letter concerned his mother "Mary Johnson's insurance Claim: 4397314." Taken together, these documents indicate that Homer Johnson understood that he was Mary's beneficiary, understood that he had a right to the proceeds of her life insurance and survivor benefits, and that he accepted that property right within the meaning of MCL 700.2910(c).³

Homer Johnson also executed an assignment of the insurance proceeds to Crandell in order to pay Mary Johnson's funeral expenses. In the assignment, he directed that \$5,056.50 of the proceeds go to Crandell and instructed that the remaining should be forwarded to him. Although he later testified that he did not know what he was signing, Homer Johnson admitted that the assignment was to pay Mary Johnson's funeral expenses and he admitted that he understood that the funds were coming from the insurance proceeds. He also stated that he wanted Crandell to get paid for its services.

These documents clearly establish that Homer Johnson knew that he was the beneficiary of his late wife's insurance policy and survivor benefits and accepted his property right in those funds. Once he accepted his property right and assigned a portion of the funds after his right vested, Homer Johnson lost his right to disclaim any interest in those funds. MCL 700.2910(1)(a) and (c). Consequently, his March 2009 attempt to disclaim any interest in the funds was ineffective.

D. QUESTIONS OF FACT AND IMPROPERLY SUBMITTED EVIDENCE

Appellants argue that the trial court could only consider the assignment to Crandell in determining whether Homer Johnson's disclaimer was effective because the parties agreed to limit the record evidence to the evidence submitted at the April 13, 2009 hearing. They further argue that Homer Johnson's testimony at that hearing created a question of fact as to whether he knowingly and voluntarily signed the assignment. We are not persuaded by either argument.

³ We reject appellants' contention that the letters merely acknowledged a potential benefit. With this letter Homer Johnson did more than acknowledge a potential benefit, he identified himself as Mary's "beneficiary" and directed that any "legal documents" and "checks" should be sent to his son, who was acting as his attorney-in-fact.

As already noted, at the April 13, 2009 hearing, the trial court indicated that it was not prepared to rule on the motion to show cause.⁴ For that reason, it suggested that the parties should resolve the matter by filing competing motions for summary disposition. Although the parties seemed to agree that there were no factual disputes concerning the evidence, there was no discussion on the record—or otherwise—that provided that the evidence for these motions would be limited in any fashion. Indeed, the counsel for the Treasurer agreed to return to the record and let Homer Johnson testify in order to avoid having to depose him at a later date. Thus, the record actually belies appellants' position that the parties did not intend to collect and submit further evidence on the motion for summary disposition.

It is also well settled that a party making a motion for summary disposition under MCR 2.116(C)(10) must support that motion with affidavits, depositions, admissions, or other documentary evidence. *Barnard Mfg*, 285 Mich App at 369-370. Hence, when making her motion for summary disposition—a motion that the trial court asked her to make—the Treasurer's trial counsel had to submit or refer to record evidence to support her position. Further, contrary to appellants' position on appeal, the evidence does not have to be in admissible form; the content need only be admissible at trial. *Id.* at 373. Accordingly, because the documents were admissible in content, the Treasurer's trial counsel properly supported her motion for summary disposition with letters and documents executed by Homer Johnson and his son, who was acting as his father's attorney-in-fact. See MRE 801(d)(2). And, even if those documents had not been submitted with the Treasurer's motion, the trial court would have had to consider them to the extent that the Treasurer referred to them because the documents were already part of the lower court record. *Barnard Mfg*, 285 Mich App at 377-378 (noting that a trial court must consider evidence that a party refers to in its brief if the evidence is then filed in the action). Similarly, the trial court had the discretion to independently consider evidence contained in the record when determining whether to grant a motion for summary disposition. *Id.* at 377 n 6, 380 n 8. Therefore, the trial court did not err in considering all the documentary evidence submitted and referred to in the Treasurer's motion for summary disposition.

Because the other documentary evidence was undisputed and clearly established that Homer Johnson had lost his right to disclaim the property at issue under MCL 700.2910(1)(c), even if we were to agree that there was a question of fact as to whether Homer Johnson had effected a knowing assignment of the survivor benefit and insurance proceeds under MCL 700.2910(a), the trial court correctly determined that—as a matter of law—Homer Johnson's

⁴ The trial court had the authority to disburse the funds at issue after the April 13, 2009, if it appeared to the court that the funds were assets subject to the Treasurer's claims. See MCL 800.404(3). However, the trial court elected to give the parties the opportunity to submit the matter on competing motions for summary disposition and it is clear from the record that appellants' trial counsel agreed to this suggestion as long as everyone agreed that Unum had never received a formal claim to the funds at issue from Homer Johnson.

attempt to disclaim his interest in the property at issue was ineffective.⁵ The trial court also did not err when it determined that the life insurance proceeds and survivor benefits were assets of Homer Johnson that were subject to reimbursement under the Reimbursement Act. Consequently, the trial court did not err when it granted summary disposition in favor of the Treasurer and denied appellants' motion for summary disposition.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello

⁵ Because of our resolution of this issue, we decline to consider the Treasurer's alternate argument that, under MCL 700.2910(2), the Legislature effectively precluded prisoners from disclaiming property in order to avoid reimbursing the Department under the Reimbursement Act.